

EDMONDS CITY COUNCIL APPROVED MINUTES

February 15, 2011

At 6:00 p.m., Mayor Cooper announced that the City Council would meet in executive session regarding labor negotiation strategy. He stated that the executive session was scheduled to last approximately one hour and would be held in the Jury Meeting Room, located in the Public Safety Complex. No action was anticipated to occur as a result of meeting in executive session. Elected officials present at the executive session were: Mayor Cooper, and Councilmembers Bernheim, Fraley-Monillas, Buckshnis, Peterson, Petso and Wilson. Others present were City Attorney Scott Snyder, Human Resources Director Debi Humann, Public Works Director Phil Williams and City Clerk Sandy Chase. The executive session concluded at 6:57 p.m.

The regular City Council meeting was called to order at 7:02 p.m. by Mayor Cooper in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

ELECTED OFFICIALS PRESENT

Mike Cooper, Mayor
Strom Peterson, Council President
Steve Bernheim, Councilmember
D. J. Wilson, Councilmember
Lora Petso, Councilmember
Adrienne Fraley-Monillas, Councilmember
Diane Buckshnis, Councilmember
Michael Plunkett, Councilmember (arrived 7:42 p.m.)

ALSO PRESENT

Peter Gibson, Student Representative

STAFF PRESENT

Gerry Gannon, Assistant Police Chief
Phil Williams, Public Works Director
Lorenzo Hines, Finance Director
Rob Chave, Planning Manager
Debi Humann, Human Resources Director
Rob English, City Engineer
Scott Snyder, City Attorney
Sandy Chase, City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. APPROVAL OF AGENDA

Council President Peterson requested Agenda Item 6 be moved to follow Item 3.

COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER PETSO, TO APPROVE THE AGENDA IN CONTENT AND ORDER AS AMENDED. MOTION CARRIED UNANIMOUSLY. (Councilmember Plunkett was not present for the vote.)

2. CONSENT AGENDA ITEMS

COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO APPROVE THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. (Councilmember Plunkett was not present for the vote.) The agenda items approved are as follows:

A. ROLL CALL

B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF FEBRUARY 8, 2011.

- C. **APPROVAL OF CLAIM CHECKS #123783 THROUGH #123914 DATED FEBRUARY 10, 2011 FOR \$185,556.57.**
- D. **ORDINANCE NO. 3835 – AMENDING PROVISIONS OF CHAPTER 10.50 ECC, PUBLIC LIBRARY BOARD, TO REFLECT 2001 CHANGES TO THE AGREEMENT BETWEEN SNO-ISLE AND THE CITY AND THE 2006 CLOSING OF SPECIAL LIBRARY FUND 621.**
- E. **AUTHORIZATION TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL DESIGN AND RIGHT OF WAY SERVICES ON THE FIVE CORNERS ROUNDABOUT PROJECT.**
- F. **ORDINANCE NO. 3836 – AMENDING EDMONDS CITY CODE (ECC) 8.48.190, UPDATING PARKING PROVISIONS IN DESIGNATED BIKE LANES.**
- G. **EDMONDS SENIOR CENTER ROOF PROJECT.**
- H. **PROPOSED 2011 EQUIPMENT RENTAL HOURLY RATES FOR EXTERNAL AGENCIES AND THE TRANSPORTATION BENEFIT DISTRICT.**

3. ENERGY STAR AWARD FOR CITY HALL

Public Works Director Phil Williams recognized the City's receipt of an Energy Star Award from the U.S. Environmental Protection Agency. Largely through the efforts of Jim Stevens, Facilities Coordinator, a series of energy saving improvements have been implemented in City Hall. The Energy Star Program compares a building's energy and environmental performance with similar type buildings throughout the United States. To qualify, the building must perform better than at least 75% of the other buildings. He pointed out when City Hall was built, energy savings were not the primary goal and the building envelope, construction materials, windows, and heating system were not necessarily optimized. Many of those built in design decisions had to be overcome to achieve better performance. By contrast, a new LEED certified platinum building would provide exceptionally good energy performance. In the case of City Hall, there has been an effort to adapt an existing building and improve the performance.

Mr. Williams presented a plaque and certificate to Mayor Cooper. The brass plaque will be mounted on the interior of City Hall. City Hall can now qualify each year if improvements continue and the building remains in the upper 25% of office buildings.

Mayor Cooper asked Mr. Williams to relay his thanks to the Public Works staff. He also thanked staff who work in City Hall, noting the building is sometimes a little cold in the morning but everyone recognizes it saves energy. Mr. Williams agreed the energy savings are the result of choices that the building's tenants make regarding the use of lighting and thermostats.

6. ORDINANCES REGARDING BOND REFUNDING.

Finance Director Lorenzo Hines explained this item is consideration of an ordinance that would allow for the refunding of the 1998 Water & Sewer Revenue Bonds, 1998 Limited Tax General Obligation (LTGO) Bonds, 2001 LTGO Bonds, and 2001E LTGO Bonds. If the bonds are refunded, it is anticipated to result in approximately \$46,634 in annual debt service savings. The present value of those savings over the remaining life of the bonds is approximately \$288,000-\$289,000.

Alan Dashen, A. Dashen & Associates, recalled approximately a month ago they reviewed with the Council potential savings by refunding the outstanding LTGO bonds and will update that information tonight. He referred to the Refunding Update included in the Council packet, advising interest rates

increased during the October – December timeframe and have recently decreased slightly. He attributed the increase to the fear among buyers of municipal bankruptcies which he felt had been overblown. They have considered the savings of refunding the bonds again and recommend proceeding with the bond sale.

Mr. Dashen explained there were two ways bonds for the City could be sold:

1. Negotiated sale – an underwriting firm is selected. That firm sells the bonds on the City's behalf on a best effort basis.
2. Competitive sale – the bonds are offered for sale on the internet; lowest interest rate wins.

Because Edmonds is a highly rated City, these are LTGO bonds, and the \$4-5 million size, he recommended a competitive sale for this bond issue. If a determination is made that method will not work well, they will work with the Finance Director on an alternate method.

Scott Bauer, A. Dashen & Associates, referred to the Refunding Update and the 1998 Water & Sewer Revenue Bonds, 1998 and 1998, 2001, and 2001E LTGO Bonds they recommended be refunded in the upcoming bond issue. He referred to the average annual savings and present value savings, advising the total gross savings for the four issues is approximately \$326,000 or present value savings of \$288,000. He reviewed the bond schedule:

- February 15 Adoption of bond ordinance
- Week of March 7 Moody Rating Call
- March 23 Post Preliminary Official Statement
- April 5 Bond Sale
- April 5 Adoption of Bond sale Resolution
- April 19 Bond Closing

Mr. Dashen explained the \$288,000 present value savings could change between now and when the bonds are sold depending on interest rates. If rates increase dramatically and the savings become significantly less, they will work with staff to determine whether it is worthwhile to sell the bonds or wait. When the bonds are sold, they are purchased contingent on City Council action. If the Council does not plan to vote yes on the sale of the bonds, they would rather know before the bonds are sold as it is awkward to have the process stop at that point.

Councilmember Buckshnis explained the Council began discussing refunding in August 2010 when rates were significantly better. Rates have increased in recent months. She asked what the rate would be in April when the bonds would be sold. Mr. Dashen answered the consensus in the market is rates will slowly increase over the next year. Councilmember Buckshnis commented if rates increase, the savings via refunding are reduced. Mr. Dashen anticipated the fear associated with municipal bonds would lessen between now and April.

Councilmember Buckshnis asked the cost of a bond sale. Mr. Dashen answered it is 1- 1½ % of the issue. Mr. Bauer estimated costs of \$90,000. Mr. Dashen advised that covers the rating, their fee, bond counsel fees, and underwriting fees. Councilmember Buckshnis noted approximately 1½ years of savings were consumed by costs; some of the bonds mature in 2013. She questioned whether the Council should pursue bond refunding with rates at this level.

Councilmember Petso asked what rates were included in tonight's presentation materials. Mr. Bauer answered the current rate, 4.9%. Councilmember Petso asked whether the process could be halted if staff determines in the next few weeks that the savings are not sufficient. Mr. Dashen answered the process could be stopped and the City could wait until interest rates are more favorable. Mr. Dashen commented

the longer the Council waits, the City continues to pay the high interest rates. If the City waits long enough, the savings disappear completely. He advised the savings are net of all costs.

Alice M. Ostdiek, Foster Pepper, explained the bond ordinances outlines the structure of the transaction and authorizes the refunding of the four bond issues. She advised the Water & Sewer refunding may not be included depending on whether the City decides to go forward with other Water & Sewer Revenue Bonds in the near future. The ordinance provides sufficient flexibility to allow the Finance Director to work with the team to monitor the market and determine appropriate timing should interest rates change. Tonight Council is being asked to adopt the ordinance. They will return to the Council with a Sale Resolution that includes a summary of the terms agreed to that morning in the market based on that competitive sale. She reiterated the importance of the Council being comfortable with moving forward as the next time they are before the Council it will be after purchasers have agreed to purchase the bonds.

Ms. Ostdiek explained the ordinance pledges the City's general taxing authority as well as to the extent there is a Water & Sewer bond included, the water and sewer revenues for that portion.

Councilmember Petso asked whether via the ordinance the Council agrees to anything they have not already agreed to do such as maintain a high coverage ratio in utility rate setting or any other obligation. Ms. Ostdiek advised the specific covenants are not included in the ordinance. If the water & sewer portion is included, the same covenants would continue.

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCIL PRESIDENT PETERSON, TO ADOPT ORDINANCE NO. 3837, AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, RELATING TO CONTRACTING INDEBTEDNESS; PROVIDING FOR THE ISSUANCE OF LIMITED TAX GENERAL OBLIGATION BONDS AND REVENUE BONDS TO PROVIDE THE FUNDS NECESSARY TO CARRY OUT A REFUNDING OF ALL OR A PORTION OF CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS AND REVENUE BONDS OF THE CITY AND TO PAY THE ADMINISTRATIVE COSTS OF SUCH REFUNDINGS AND THE COSTS OF ISSUANCE AND SALE OF THE BONDS; FIXING CERTAIN TERMS AND COVENANTS OF THE BONDS; AND PROVIDING FOR THE PUBLIC SALE OF THE BONDS. MOTION CARRIED UNANIMOUSLY. (Councilmember Plunkett was not present for the vote.)

4. AUDIENCE COMMENTS

Al Rutledge, Edmonds, reported late Sunday/early Monday a vehicle being pursued by the State Patrol crashed into a neighbor's garage and the driver fled on foot. Several police agencies responded and the driver was eventually located by the Edmonds Police Department K-9 unit. He commended the Edmonds Police Department's response. Next, he relayed that Swedish Edmonds reported a loss last quarter. The Hospital Board paid off one of their bonds. The Hospital District tax may be reduced.

Donna Alexander, Edmonds, explained the house next door to her home was destroyed in a fire approximately a year ago. She expressed concern with the appearance of the house and the amount of debris in the yard, commenting it was unsightly as well as dangerous to children in the neighborhood and the environment. The homeowner has not been responsive to her requests to cleanup the property. She asked whether the City could pursue cleanup via the nuisance ordinance. Mayor Cooper relayed Council President Peterson's indication that he has contacted the Code Enforcement Officer Mike Thies today about this issue. Mayor Cooper suggested she send photographs of the property to Mr. Thies.

Kristie Simard, Edmonds, also a neighbor of the house destroyed by fire, explained they have contacted Code Enforcement who indicated he can do nothing about the situation and that the owner of the property has done all he is required to do. She referred to the photographs, commenting the property was unsafe,

unsightly and in danger of collapse. The building was declared a total loss by the insurance company and there is apparently a dispute regarding value. She was hopeful the City Council could assist them in remedying the situation.

Ron Wambolt, Edmonds, asked how the 11 applicants for City Attorney were reduced to the 4 the Council interviewed. He has been unable to determine what other firms applied or what process was used.

5. PUBLIC HEARING ON RECONSIDERATION OF AN ORDINANCE AMENDING HOME OCCUPATIONS, EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) 20.20.

Planning Manager Rob Chave explained the Council held a public hearing on Home Occupation amendments on January 4, 2011. Following the public hearing, the Council provided direction to staff and staff has been drafting amendments for further Council discussion. On January 14, the Council voted to reconsider and hold a public hearing to reconsider the January 4 vote.

He provided a comparison of the current code and the current draft amendment

	Current code	Current Staff Draft Amendment
Home Occupation with no visitors	Permitted	Permitted
Cost	\$1550	\$585
Public Notice/Comment	Yes	Yes
Hearing	Yes	Yes (on appeal)
Limitations (hours, visits, employees)	No (set by Hearing Examiner)	Yes (upper limits established in code)

Mr. Chave explained in the current process, because the code is silent with regard to conditions, staff must develop a “rule of thumb” to assist the Hearing Examiner in applying conditions. At the January 4 public hearing there was interest in establishing standard conditions for home occupations. Under the proposed draft amendments, the upper limits would be codified. The proposed amendments also address art studios and small urban farms. Under the current code they are allowed as a home occupation but none of the art work or produce could be sold on site. For example, if the City held an art studio tour, people could visit the art studio but the artist could not sell their artwork. He clarified the amendments were not before the Council for consideration tonight.

He noted there were several misconceptions as a result of the public hearing. The goal is to streamline and simplify the process as well as provide more certainty for home occupations.

Councilmember Fraley-Monillas asked whether home occupations could locate anywhere in the City. Mr. Chave answered yes, the code applies citywide. Local circumstances are considered for specific home occupations; that would not change. It is possible in some locations if there is not adequate parking that additional conditions will be applied or a home occupation denied.

Councilmember Fraley-Monillas observed if staff’s recommendation is not approved, there will be no change to the current situation. The only change will be the cost. Mr. Chave responded the amendments provided by staff provide a more streamlined process (staff decision rather than Hearing Examiner), public notice will be the same, ability to comment on an application remains the same, and additional standards (upper limits) will be established in the code. If the Council does not approve amendments, the situation with regard to art studios and urban farms continues to exist.

City Attorney Scott Snyder explained the Council voted to reconsider their January 4 motion and that motion is now on the table (to direct the City Attorney to prepare an ordinance to implement the Planning Board's recommendations as amended). If the vote on the motion fails, the Council will proceed with the public hearing and the Council can make a new motion and proceed with deliberations. Mayor Cooper clarified if the motion is approved, the agenda item is concluded and staff will proceed as directed on January 4.

Councilmember Wilson summarized the process: On January 4 the Council amended the Planning Board recommendation and directed staff to prepare an ordinance implementing the Planning Board's recommendations. The Council then passed a motion to reconsider the motion. The Council is now voting again on the January 4 motion.

Councilmember Buckshnis explained she brought the motion to reconsider because January 4 was not a good time for a public hearing. Subsequent to the Council's decision she received at least 25 emails objecting to the amendments to home occupation regulations and 1 email in support of the amendments. She assumed citizens were not aware the home occupation regulations were being expanded.

Councilmember Plunkett commented he opposed this the first time and was happy to vote again.

Councilmember Wilson commented he typically was deferential to public comment when so many emails were received on a topic. However, whoever was organizing the opposition was providing poor information because the comments and concerns were not reflective of the proposed amendments. For example the amendments will not turn every residential neighborhood into a strip mall as has been suggested. The amendments clarify what can already occur and propose limitation such as the number of employees. He summarized many of the concerns raised by the public were wholly unfounded.

Council President Peterson echoed Councilmember Wilson's comments. He agreed the timing of the public hearing may have added to the sense of misinformation. As Mr. Chave explained, the amendment will make it easier for the average citizen to access the process via a staff decision rather than the Hearing Examiner. The proposed process provides more direct communication with staff, notice will still be provided to neighbors as well as the fee reduced from \$1550 to a more reasonable \$585.

Student Representative Gibson referred to Exhibit 1 that states no vehicles can visit the property or business between 9:00 p.m. and 8:00 a.m. He asked whether someone could park their vehicle and walk to the residence between those hours.

Councilmember Fraley-Monillas pointed out the community has not been sufficiently educated regarding the amendments if the Council is receiving numerous emails.

Councilmember Buckshnis advised the emails and telephone calls she received were from people who watch City Council meetings on TV. She preferred the home occupation regulations remain as they currently exist until the public can be better educated.

Mayor Cooper restated the motion now on the table:

TO DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE TO IMPLEMENT THE PLANNING BOARD'S RECOMMENDATIONS AS AMENDED.

Mayor Cooper clarified a yes vote reaffirms the action the Council took on January 4 to direct staff to bring back the ordinance as amended. A no vote starts the process over.

UPON ROLL CALL, MOTION FAILED (3-4), COUNCILMEMBERS WILSON AND BERNHEIM AND COUNCIL PRESIDENT PETERSON VOTING YES; AND COUNCILMEMBERS PETSO, PLUNKETT, FRALEY-MONILLAS AND BUCKSHNIS VOTING NO.

Mayor Cooper opened the public participation portion of the public hearing.

Dr. Jonathan Bannister, Edmonds, Executive Director, Pacific Northwest Budo Association, requested the Council support the changes proposed by staff to ECDC 20.20 with regard to home occupations. He has been an instructor of Japanese martial and cultural arts for more than 30 years. He is internationally accredited to teach Aikido, classical swordsmanship, calligraphy and flower arranging and would like to share his knowledge and enthusiasm for the arts by offering private, one-on-one instruction in his home. Instruction would be limited to one person per hour 9:00 a.m. to 8:00 p.m. He is located on an arterial street, requires no signage, has ample off-street parking, and his facilities are modern and up to code. The arts he teaches are practiced in silence and he will not offer regular classes. The scale of activity contemplated is modest and in keeping with the sensibilities of the community. In January 2010 he applied for a Type IIIB conditional use permit but was deterred by the \$1550 application fee. He urged the Council to support the staff's and Planning Board's recommendation for a home occupation administrative permit. The proposal is the result of more than a year of careful discussion and consideration by many parties that included ample opportunity for public review and comment. The amendment streamlines the process, reduces fees and facilitates the licensing of home occupations that likely would be permitted under any circumstance.

Roger Hertrich, Edmonds, commented the issue was dollars versus neighbors' rights. He anticipated the previous speaker would have groups of people visiting his home which results in additional traffic. He referred to Councilmember Bernheim's comment that remedies were available if problems developed or the character of the neighborhood changed, advising he had not found any remedies in the code to address problems. He anticipated if problems arose, the business would get their way after talking to staff and neighbors would be forced to appeal, costing them more than the original applicant paid. He suggested appeals be to the City Council and have no fee. Next, he objected to the hours of operation, commenting the hours in the construction noise ordinance were more restrictive. He preferred to retain the existing regulations that allow one office, one employee, and no signs, as such businesses were not visible to the neighborhood. He feared the proposed amendments would result in residential neighborhoods that function like a commercial zone. He objected to any change that altered the character of his neighborhood.

Al Rutledge, Edmonds, pointed out on February 17, 2009 the Council increased fees. He inquired about the cost of a home occupation application in 2009.

Hearing no further comment, Mayor Cooper closed the public participation portion of the public hearing.

Councilmember Fraley-Monillas was supportive of generating tax dollars for Edmonds and did not want to prevent citizens from creating a business in their home. She was concerned that at least the 15-40 people who provided comment have been given the wrong impression. She was uncertain how to educate the public. She received emails from citizens expressing concern with businesses locating in their neighborhood, however, businesses can already locate in neighborhoods.

Council President Peterson agreed with Councilmember Fraley-Monillas regarding the difficulty educating the public. Two public hearings have been held and three people spoke at each one; Dr. Bannister and Mr. Hertrich spoke at both, Mr. Rutledge spoke at one and Mr. Spellman spoke at one. There were also public hearings at the Planning Board. He was uncertain how the Council could further educate the public; the Council is elected to study issues and make decisions. He did not think it was

feasible to hold meetings in neighborhoods throughout the City in an effort to educate the public. He was frustrated the Council made a decision and was now changing its mind based on a couple dozen emails. He preferred to educate the people who had expressed concerns one at a time rather than allow them to derail the process.

COUNCILMEMBER WILSON MOVED, SECONDED BY COUNCIL PRESIDENT PETERSON, TO ADOPT THE ORIGINAL ORDINANCE RECOMMENDED BY THE PLANNING BOARD.

As the original Planning Board ordinance was not included in the packet, Councilmember Wilson suggested delaying further discussion and amendments to a future meeting. His goal by making the motion was to put the matter back in play and not let it drop.

Mr. Chave agreed with continuing the ordinance to a future date, explaining the Council has not yet seen the ordinance that was drafted in response to the public hearing. Staff tried to take the suggestions regarding reducing the cost of the application and streamlining the process, retaining public notice and addressing art studios and urban farms. He asked whether the Council wanted to have another public hearing.

Councilmember Wilson commented if there were four votes to not talk about this anymore, he was open to that option as well.

COUNCILMEMBER WILSON WITHDREW HIS MOTION WITH THE AGREEMENT OF THE SECOND.

COUNCILMEMBER WILSON MOVED, SECONDED BY COUNCILMEMBER BERNHEIM, FOR THE COUNCIL TO CONSIDER THE STAFF-RECOMMENDED ORDINANCE WITH THE CHANGES MR. CHAVE REFERENCED ON A FUTURE DATE.

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER PETSO, TO REFER THE ORDINANCE TO THE COMMUNITY SERVICES/DEVELOPMENT SERVICES COMMITTEE FIRST.

Mayor Cooper ruled that Councilmember Buckshnis' motion took precedence over Councilmember Wilson's motion.

Councilmember Plunkett was intrigued by the idea of reducing the cost of an administrative review. However, along the way it became something else that he was unable to support. He looked forward to an opportunity for the Community Services/Development Services (CS/DS) Committee to review the proposed amendments.

Council President Peterson reiterated this is the second public hearing before the Council and the matter has been reviewed by the CS/DS Committee at least once before as well as reviewed by the Planning Board. He was uncertain what new light would be shed by two Councilmembers reviewing it again. He preferred the ordinance be presented to the full Council.

Councilmember Buckshnis anticipated a lot of light would be shed on the issue. After received 25 emails, she felt it was important to listen to the public.

Councilmember Plunkett pointed out there are different Councilmembers on the CS/DS Committee than were on the Committee when the matter was reviewed previously. He did not recall that the Council was provided a strike out version comparing the original code to the changes recommended by the Planning

Board. He questioned how the intent to reduce the \$1550 fee to \$585 became amendments that would significantly impact residential communities.

Councilmember Fraley-Monillas anticipated having the matter reviewed by the CS/DS Committee would allow consideration of options, the appeal process, etc.

Councilmember Bernheim supported staff developing an ordinance on January 4; the ordinance simply expands the use of home occupations and gives people living in residential areas more flexibility to use their home for a business in order to maximize economic development. He viewed the amendments as economic development. He disagreed the issue was dollars versus neighbor's rights, noting often neighbor's rights are associated with dollars. Some of the complaints about the proposal were that it would reduce property values. He viewed it as neighbor's rights against neighbor's rights; no one has a right to prevent a neighbor from using their home as a home occupation, subject to the City's regulations. He believed the critics of the amendments were exaggerating the negative consequences. With regard to remedies, if negative consequences arise and neighborhoods are crowded with cars, children are prevented from playing in the street, neighborhood character changes and there are signs everywhere, they can be addressed via additional amendments. He summarized this was a good, progressive idea and although the opposition was heartfelt, the negative consequences are exaggerated.

Councilmember Wilson encouraged the CS/DS Committee to present the Council a work product and not just let it languish.

MOTION CARRIED (5-2), COUNCIL PRESIDENT PETERSON AND COUNCILMEMBER BERNHEIM VOTING NO.

Council President Peterson advised this will be scheduled on the March 8 CS/DS Committee agenda.

7. CONFIRMATION OF MAYOR'S APPOINTMENT AND APPROVAL OF PROFESSIONAL SERVICES AGREEMENT FOR LAND USE HEARING EXAMINER SERVICES.

Human Resources Director Debi Humann explained the City's previous Land Use Hearing Examiner elected not to renew their contract at the end of 2010. The City created an RFQ/RFP and advertised for a new Hearing Examiner. Four applicants applied for the position, two applicants moved forward to the interview phase, Olbrechts & Associates and Sound Law Center. Interviews were held November 29, 2010. The interview panel selected Olbrechts & Associates as the City's new Land Use Hearing Examiner pending contract approval and confirmation by City Council.

The Council packet contains a copy of the Professional Service Agreement with Olbrechts & Associates. The contract has been reviewed by legal and Planning. The main change from the previous contract is a change in the fee structure from a fixed flat monthly fee to an hourly rate with an annual cap in an attempt to lower contract costs. She requested Council approval of the Professional Services Agreement.

Councilmember Petso referred to Mr. Olbrechts' comment in his application materials that he intended to use Mr. Snyder as a backup Hearing Examiner. Ms. Humann advised that was discussed with Mr. Olbrechts and he does not plan to use Mr. Snyder. Mayor Cooper referred to his memo to Council today clarifying that Mr. Olbrechts raised that issue during the interview and stated because Ogden Murphy Wallace was the City Attorney, he would not use him as a backup.

Councilmember Petso advised that fact was not reflected in the contract document. Mr. Snyder advised Mr. Olbrechts left Ogden Murphy Wallace approximately six months ago and did not ask him whether he wanted to serve as backup Hearing Examiner. The contract does not mention his acting as a backup. The

City would need to authorize individuals serving as backup. In Mr. Olbrechts' proposal he mentions the availability of Vicki Orrico and Emily Terrell.

Councilmember Petso referred to the first paragraph on page 2 of Mr. Olbrechts' Statement of Qualifications that states he will be providing dual representation with OMW on city attorney clients and OMW will be handling most issues not related to land use. She asked whether there was a conflict of interest if Mr. Olbrechts planned to partner with OMW. Mr. Snyder advised OMW had no intention of partnering with Mr. Olbrechts on this contract. He anticipated this verbiage was a word processing error.

Mayor Cooper explained Mr. Olbrechts brought that to the interview team's attention and made it very clear that he did not intend to partner with Ogden Murphy Wallace. The professional service agreement requires the City Council to approve backup Hearing Examiners.

Council President Peterson advised the reference to OMW is only in the Statement of Qualifications which was included in the packet as information and was not part of the contract. He participated in the interviews and found Mr. Olbrechts to be an excellent applicant. He believed Mr. Olbrechts' demeanor and openness would be very fitting for Edmonds. As he displayed during the interview and his references and experience demonstrate, he will serve citizens well by encouraging and helping them through the process. He summarized Mr. Olbrechts has the personality and professional credentials to make the Hearing Examiner process more comfortable for citizens. He supported the Mayor's recommendation.

Councilmember Bernheim observed the Hearing Examiner indemnifies the City for any negligent acts of the Hearing Examiner. He asked whether there was a bond or insurance requirement. The only insurance requirement in the contract is auto liability. He asked whether a bond or insurance was contractually required. Mr. Snyder answered it was not.

Mr. Snyder suggested if the Council makes a motion to approve the contract, they also approve the additional service providers, Ms. Orrico and Ms. Terrell.

COUNCILMEMBER BERNHEIM MOVED, SECONDED BY COUNCIL PRESIDENT PETERSON, TO CONFIRM THE MAYOR'S APPOINTMENT OF OLBRECHTS & ASSOCIATES PLLC AS THE CITY'S HEARING EXAMINER AND APPROVE THE PROPOSED PROFESSIONAL SERVICES CONTRACT.

Councilmember Bernheim was disappointed a greater choice of applicants was not provided and that no information was provided regarding the other three applicants. Mr. Olbrechts is obviously qualified but he would prefer to have a choice of qualified applicants. He will support appointing Olbrechts & Associates as the City's Hearing Examiner as long as a bond or insurance is provided.

Mayor Cooper referred to Section 10.35.010 that states the Hearing Examiner shall be appointed by the Mayor and confirmed by the City Council for 4 years and that the first year will be probationary.

Councilmember Petso advised she will not support the motion. The Council has an enormous responsibility to ensure fair hearings as well as hearings that appear to be fair. She found it bizarre that the applicant that emerged from the process was the former backup City Attorney and proposed, whether an error or not, to partner with the City Attorney.

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO AMEND THE MOTION TO INCLUDE LIMITING THE BACKUP ATTORNEYS TO THE SERVICE PROVIDERS IDENTIFIED AND TO REQUIRE AN INDEMNITY BOND.

Mayor Cooper ruled Councilmember Petso's motion out of order as this is a confirmation. Her motion was more appropriate as a separate motion following confirmation and approval of the professional services contract.

Councilmember Buckshnis advised she will support the motion but was disappointed with the materials provided, anticipating that staff and the Mayor should have read all the documents and discovered the verbiage regarding OMW. Mayor Cooper assured the interview team and he read all the materials. He reiterated Mr. Olbrechts had brought the error to the interview team's attention, advising it was the result of using a template. He summarized the reference to OMW was only in the Statement of Qualifications and not in the contract.

To Councilmember Bernheim's comment that the City only had two qualified applicants, Councilmember Wilson relayed his understanding that the previous Hearing Examiner did not renew their contract because they felt they were not treated well by the Council. His understanding through colleagues is that is a commonly held opinion about this Council and the perceived treatment of the former Hearing Examiner by the Council. If the Council is getting that reputation, deserved or not, it may impact how many applicants for Hearing Examiner apply. He summarized the way the Council behaves does have consequences. He shared the frustration with the process and the documents.

With regard to the size of the pool for the Council's consideration, Mayor Cooper advised the pool of Hearing Examiners is fairly limited. There are only a handful of law firms that do Hearing Examiner work. For whatever reason, the last two Hearing Examiners have not continued their service with the City which limited the pool further. Mr. Olbrechts is approximately \$30/hour less expensive than the other applicant that was interviewed. The other two applicants, while they may be well qualified lawyers, had no experience as Hearing Examiner and did not meet the qualifications in the RFQ.

Councilmember Bernheim referring to Councilmember Wilson's understanding that the past two Hearing Examiners had been insulted out of their job by a disrespectful City Council or citizens and that that justified the narrow pool. He disagreed with Councilmember Wilson's statement and was suspicious of the limited number of applications the City received. He recalled the City's previous Hearing Examiner, Toweill-Rice-Taylor, broke up.

Councilmember Fraley-Monillas expressed her support for Mr. Olbrechts as the City's Hearing Examiner. She found it interesting that some heard the prior Hearing Examiner left due to Council conduct; she was told directly that the Hearing Examiner chose to leave due to conduct and behavior of particular citizens during numerous hearings and it had nothing to do with the Council.

Student Representative Gibson suggested everyone be polite to the new Hearing Examiner.

MOTION CARRIED (5-2), COUNCILMEMBER PLUNKETT AND COUNCILMEMBER PETSO VOTING NO.

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER BERNHEIM, TO ADD TO THE CONTRACT A PROVISION LIMITING BACK UP HEARING EXAMINERS TO THE TWO INDIVIDUALS IDENTIFIED AND REQUIRING AN INDEMNITY BOND.

Mr. Snyder asked whether the request was for an indemnity bond or personal liability insurance. Mayor Cooper suggested staff include the appropriate language in the contract.

Councilmember Plunkett asked why language approving backup Hearing Examiners and a requirement for an indemnity bond/personal liability insurance was not included in the contract. Mr. Snyder answered

it was not in previous contracts. Often Hearing Examiners are not lawyers and cannot obtain professional liability insurance.

Council President Peterson asked whether the backup Hearing Examiners could be easily changed. Mr. Snyder advised if additional backup Hearing Examiners are necessary, they simply need to be approved by the Council by voice motion.

MOTION CARRIED UNANIMOUSLY.

8. REPORT ON CITY COUNCIL COMMITTEE MEETINGS OF FEBRUARY 8, 2011

Public Safety & Human Resources Committee

Councilmember Wilson reported the Committee discussed the camping ordinance and plans for oversight and review of Human Resources. The Committee will hold its next meeting on March 1 at 5:30 p.m.

Community Services/Development Services Committee

Councilmember Fraley-Monillas reported the Committee reviewed amendments to reflect 2011 changes to the agreement between Sno-Isle and the City. This was approved on the Consent Agenda. She requested potential addition of HB 1265 to the legislative agenda as a priority item be scheduled on an upcoming Council agenda. The Committee discussed the Shell Valley emergency access project. This item will be scheduled on the next available Council agenda for consideration and allow public comment. Next, the Committee reviewed an RFQ for professional design and right-of-way services on the Five Corners Roundabout project which was approved on the Consent Agenda. Staff presented bids for the Senior Center roof project. This was approved on the Consent Agenda.

Finance Committee

Councilmember Petso reported the Finance Committee considered proposed 2011 equipment rental hourly rates for external agencies and the Transportation Benefit District which was approved on the Consent Calendar. The Committee reviewed the Professional Services Agreement for Land Use Hearing Examiner services. The Committee also reviewed the following:

- General Fund update for January 2011
- Four items related to financial policies. Discussion of those items will occur via different paths. Some are revisions to existing financial policies and others are changes to financial reports.
- Preliminary 2010 Fourth Quarter report

9. MAYOR'S COMMENTS

Mayor Cooper reported he will be in Olympia February 16 and 17, representing the City at the AWC Legislative Conference.

Mayor Cooper explained in reading the contract between the City and Fire District 1, he found a requirement for a joint City Council meeting with Fire District 1 Commissioners prior to April 1. Staff is working to schedule that meeting. He noted that is a different meeting than the March 29 joint meeting which is the Regional Fire Authority (RFA) Planning Committee.

10. COUNCIL COMMENTS

Councilmember Wilson advised he initiated that amendment to the Fire District 1 contract and was waiting to see if the meeting would be scheduled.

Councilmember Wilson reported he was in Olympia recently to testify in support of HB 1265 on his own behalf. He also raised some of the concerns the Council raised during their deliberations. Representatives Kagi and Ryu were appreciative of his input. He also testified regarding RFA bills. He summarized it has been a very active session and the City's lobbyist, Mike Doubleday, is doing good work for the City.

Councilmember Bernheim commented even though the Council has difficult decisions to make, Councilmembers are able to make them and move on. He asked why the minutes of the February 1 meeting when the Council interviewed City Attorney candidates, did not include the remarks made by the applicants. City Clerk Sandy Chase answered that has been standard operating procedure whenever the Council conducts interviews of City Council applicants and the same procedure was followed for the City Attorney applicants.

Councilmember Plunkett asked whether Council President Peterson had received Councilmember Wilson's email requesting that consideration of Council staff be scheduled on an agenda.

Councilmember Fraley-Monillas apologized to Councilmembers and staff for stumbling through the last few meetings. Next week is her last chemo treatment and she anticipated it will take six weeks to recover. She thanked everyone for their indulgence and patience while she maintained her Council position and continued to represent the citizens of Edmonds in a thoughtful and prudent manner.

Councilmember Buckshnis relayed that she has been asked to do a presentation regarding the cash flow versus working capital approach. She explained the working capital approach was used by Edmonds for General Fund Ending Cash and is the industry standard as outlined in Edmonds Ordinance 3789. Edmonds utilizes a "Calculation of General Fund Beginning Working Capital" approach which is defined as current assets minus current liabilities. This one value is used throughout the entire year regardless of any differences between actual General Fund Revenue and actual General Fund Expenditures that occur throughout the year.

She provided an example using her own household budget:

Example Diane's Household:

Current Assets \$400,000

Current Liabilities 200,000

Working Capital \$200,000

This \$200,000 would be used in all forecast summaries throughout the year, a practice that is not sanctioned by Government Finance Officers Association (GFOA) or GFOA Standard #11.2.

Cash flow reporting is just that, reporting actual revenue compared to revenue budget and reporting actual expenditure to expenditure budget. The actual difference is either added or subtracted from the General Fund Cash Flow Balance which means the starting General Fund Balance should agree to the Ending General Fund balance year to year. The reporting of actual revenues and actual expenditures and then compared to their respective budget balance is an accepted GFOA practice. It is very transparent for citizens to understand as it is like looking at your own checkbook.

She provided other examples using her budget monthly cash flow, explaining, this method provides an actual and accurate General Fund Cash Flow Balance month by month and a GFOA practice. Citizens can see exactly where the City's revenue and expenditures are and this method is more accurate than the working capital approach which would still state that as of the end of February the beginning General Fund balance was still at \$200,000 which is misleading.

She provided an example of a report comparing each month's budget to actual and the percentage over/under, noting in this method everything ties.

The cash flow approach is citizen friendly. It allows citizens to see exactly where the General Fund stands in terms of revenue and expenditures compared to budget. The Working Capital Approach does not provide accurate and current General Fund data and does not require ensuring that all numbers tie and/or balance.

The difference is the working capital approach is not sanctioned by the GFOA as it uses one number throughout the entire year for very important decisions (labor, potential levy, staffing, etc.). The cash flow approach is sanctioned by the GFOA (#11.2) and provides a detailed analysis of month by month of actual revenue compared to budget and actual expenditure compared to budget. At any point in time, citizens can trace and tie any of the numbers.

This is important because:

- Remember last year, the City of Edmonds was "running out" of money in 2012.
- Now we are "not running out" of money until 2014.
- What happened? Projections changed using varying percentages on an executive summary that does not use actual General Fund numbers.
- Why not show the citizens exactly where their money is being spent in an easy format?
- Why not comply to industry standards?
- Ordinance 3789 outlines just these issues

She asked what an average citizen willing to open their pocket and give the City money by passing a levy would prefer: a working capital General Fund Balance that is the same each month or a Cash Flow Monthly General Fund balance that shows a detailed analysis of month by month of actual revenue compared to budget and actual expenditure compared to budget.

Council President Peterson advised he received Councilmember Wilson's email and will schedule consideration of Council staff on an upcoming agenda. He thanked Councilmember Buckshnis for her report and suggested in the future she provide the Council the PowerPoint slides prior to the meeting.

Council President Peterson advised Councilmember Bernheim, Darrol Haug, Mr. Hines, the Mayor and he met to begin discussing how to improve the clarity of the City's financial reports. Mr. Hines has contacted the software company who indicated they have methods to create the budget reports Councilmember Buckshnis is interested in. The meeting was very productive and they are well on their way toward addressing many of the concerns within the next month. He thanked Mr. Haug for volunteering his time and Mr. Hines for listening to their concerns.

11. ADJOURN

With no further business, the Council meeting was adjourned at 9:08 p.m.